

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE SMITH,

Plaintiff,

CIVIL ACTION NO. 05-CV-70296-DT

VS.

DISTRICT JUDGE GERALD E. ROSEN

JOHN WATKINS,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

_____ /

OPINION AND ORDER DENYING PLAINTIFF'S MOTION TO REQUEST

This is a civil rights action filed by Plaintiff Smith, a Michigan state prisoner, alleging that Detroit police officers used excessive force against him and other claims. Before the Court is Plaintiff's Motion to Request filed on April 9, 2007. (Docket no. 34). The motion seeks discovery from the Wayne County Jail and the Detroit Police Department. In an earlier screening order, Judge Rosen dismissed all Defendants except for Defendant Watkins. (Docket no. 10). There has been no response to this motion. The Court dispenses with oral argument pursuant to E.D. Mich. L.R. 7.1(e). All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). This matter is therefore ready for ruling.

There are several defects in Plaintiff's motion. First, it does not contain a certificate of service. *See* Fed. R. Civ. P. 5(d). In the earlier Order, Judge Rosen warned Plaintiff that he must serve all papers filed with the Court on Defendant Watkins or his legal counsel. The Order further stated that any paper not containing a certificate of service would be disregarded. (Docket no. 10). Therefore, this motion should be disregarded because it does not contain a certificate of service.

Moreover, the motion appears to be seeking discovery from certain entities. Such a request should not be filed with the Court. Fed. R. Civ. P. 5(d). Plaintiff refers to the motion as a motion to

compel at one point; however, there is no showing that the request was previously served on the entities and that they have refused to respond to the request. A motion to compel is therefore premature. *See* Fed. R. Civ. P. 37. In addition, if considered as a motion to compel the motion is defective because it fails to include a verbatim recitation of the response to the discovery request or a copy of the response. *See* E.D. Mich. L.R. 37.2.

Accordingly, for all of these reasons, Plaintiff's Motion to Request will be denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Request (docket no. 34) is **DENIED**.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: April 23, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Dwayne Smith and Counsel of Record on this date.

Dated: April 23, 2007

s/ Lisa C. Bartlett
Courtroom Deputy